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UNITED STATES DEPARTMENT OF COMMERCE  
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In re Application of	:	
Christiane LAUK	:	
Application No.: 08/981,924	:	COMMUNICATION
PCT No.: PCT/DE96/01296	:	RE
Int. Filing Date: 12 July 1996	:	NOTIFICATION OF
Priority Date: 12 July 1995	:	ACCEPTANCE OF APPLICATION
For: METHOD FOR DETERMINING THE	:	
EFFECTIVENESS AND TOLERANCE	:	
OF A XENOGENEIC SUBSTANCE	:	
ADMINISTERED TO AN ORGANISM	:	

This application is before the PCT Legal Office for consideration of issues arising under 35 U.S.C. 371.

**BACKGROUND**

On 12 July 1996, applicant filed international application PCT/DE96/01296, which claimed priority of an earlier German application filed 12 July 1995. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 January 1997. A Demand for international preliminary examination, in which the United States was elected, was filed on 05 February 1997. Accordingly, the thirty month period for paying the basic national fee for entering the national stage in the United States expired at midnight on 12 January 1998.

On 13 January 1998, applicant filed a Transmittal Letter for entry into the national stage in the United States under 35 U.S.C. 371. Filed with the Transmittal Letter were, inter alia, the requisite basic national fee, an English translation of the description and claims, a verified statement claiming small entity status and a declaration of the inventor.

On 06 April 1998, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Acceptance of Application (Form PCT/DO/EO/903) to inform applicant that all the requirements of 37 CFR 1.495 had been satisfied and that the application was accepted for entry into the national stage in the United States as of 13 January 1998.

### DISCUSSION

A review of applicant's file reveals that the full basic national fee was not paid by the expiration of the statutory 30 month deadline from the priority date claimed of 12 July 1995. Accordingly, applicant has not met the requirements under 35 U.S.C. 371(c) (1) and the Notification of Acceptance of Application of 06 April 1998 was issued in error and is hereby VACATED.

The application is being returned to the United States Designated/Elected Office for further processing, including the issuance of a Notification of Abandonment of Application (Form PCT/DO/EO/909).

### RE COURSE

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied (1) by an adequate verified showing of the cause of unavoidable delay, (2) by a proper reply, (3) by the petition fee required by law, and (4) by a terminal disclaimer and fee of \$110 where the filing date of the international application is before 08 June 1995 pursuant to 37 CFR 1.137(c). The petition fee required by law for a small entity is \$55.

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the date on which the application became abandoned. Such a petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply unless it has been previously submitted, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional", and (4) by a terminal disclaimer and fee of \$110 where the filing date of the international application is before 08 June 1995 pursuant to 37 CFR 1.137(c). The petition fee required by law is \$660 for a small entity.

Since an oath/declaration executed by the named inventor(s) and an English language

translation of the international application was apparently not filed before the expiration of twenty/thirty months from the priority date, a \$65.00 surcharge fee for a small entity under 37 CFR 1.492(e) and a \$130.00 processing fee under 37 CFR 1.492(f) are required as part of the reply to be filed with any petition to revive that may be filed. See Section 711.03(c) of the Manual of Patent Examining Procedure (MPEP). Also note the changes to patent practice and procedure at 62 Fed. Reg. 53531 (October 1997); 1203 Off. Gaz. Pat. Office 63 (October 21, 1997) (Effective Date: 01 December 1997).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

This recommendation to file a petition under 37 CFR 1.137(a) or (b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

Since fees are subject to change, the amount of a fee should be verified before submittal of a required fee to the PTO. Changes in fees and surcharges may occur from time to time before filing and during prosecution of an application, therefore, it may be useful to contact the General Information Services Division at telephone number 800-PTO-9199 or consult the USPTO's web page at [www.uspto.gov](http://www.uspto.gov) to obtain information on any changes in fee requirements.



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